



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2021-0256; FRL-8692-01-R5]

**Air Plan Approval; Wisconsin; Attainment Plan for the
Rhineland SO₂ Nonattainment area**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the State Implementation Plan (SIP) revision submitted by Wisconsin on March 29, 2021, which amends a SIP submission previously submitted to EPA on January 22, 2016 and supplemented on July 18, 2016, and November 29, 2016, for attaining the 1-hour sulfur dioxide (SO₂) primary national ambient air quality standard (NAAQS) for the Rhineland SO₂ nonattainment area. This plan (herein referred to as Wisconsin's Rhineland SO₂ plan or plan) includes Wisconsin's attainment demonstration and other elements required under the Clean Air Act (CAA). In addition to an attainment demonstration, the plan addresses the requirement for meeting reasonable further progress (RFP) toward attainment of the NAAQS, reasonably available control measures and reasonably available control technology (RACT/RACM), and contingency measures. This action supplements a prior action which found that Wisconsin had satisfied emission inventory and new source review (NSR) requirements for this area, but had not met

requirements for the elements proposed to be approved here. EPA is proposing to conclude that Wisconsin has appropriately demonstrated that the plan provisions provide for attainment of the 2010 1-hour primary SO₂ NAAQS in the Rhinelander SO₂ nonattainment area and that the plan meets the other applicable requirements under the CAA.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2021-0256 at <http://www.regulations.gov>, or via email to leslie.michael@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **"FOR FURTHER INFORMATION CONTACT"** section. For the full EPA

public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Abigail Teener, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-7314, teener.abigail@epa.gov. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19.

SUPPLEMENTARY INFORMATION: This supplementary information section is arranged as follows:

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I. Why was Wisconsin Required to Submit an SO₂ Plan for the Rhinelander Area?

On June 22, 2010, EPA promulgated a new 1-hour primary SO₂ NAAQS of 75 parts per billion (ppb), which is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations does not exceed 75 ppb, as determined in accordance with appendix T of 40 CFR part 50. See 75 FR 35520, codified at 40 CFR 50.17(a)-(b). On August 5, 2013, EPA designated 29 areas of the country as nonattainment for the 2010 SO₂ NAAQS, including the Rhinelander area within the State of Wisconsin. See 78 FR 47191, codified at 40 CFR part 81, subpart C. These area designations were effective October 4, 2013. Section 191 of the CAA directs states to submit SIPs for areas designated as nonattainment for the SO₂ NAAQS to EPA within 18 months of the effective date of the designation, *i.e.*, by no later than April 4, 2015 in this case. These SIPs are required to demonstrate that their respective areas will attain the NAAQS as expeditiously as practicable, but no later than 5 years from the effective date of designation, which is October 4, 2018.

In response to the requirement for SO₂ nonattainment plan submittals, Wisconsin submitted a nonattainment plan for the Rhinelander area on January 22, 2016, and supplemented it on July 18, 2016, and November 29, 2016. On March 23, 2021,¹ EPA partially approved and partially disapproved Wisconsin's Rhinelander SO₂ plan as submitted and supplemented in 2016. EPA approved the base-year emissions inventory and affirmed that the

¹ 86 FR 15418 (March 23, 2021).

new source review requirements for the area had previously been met.² EPA also approved the SO₂ emission limit for Ahlstrom-Munksjö's Rhineland facility (Ahlstrom-Munksjö) (formerly Expera Specialty Solutions LLC (Expera)) as SIP-strengthening. At that time, EPA disapproved the attainment demonstration, since the plan relied on credit for more stack height than is creditable under the regulations for good engineering practice (GEP) stack height. Additionally, EPA disapproved the plan for failing to meet the requirements for meeting RFP toward attainment of the NAAQS, RACM/RACT, emission limitations and control measures as necessary to attain the NAAQS, and contingency measures.

Under sections 110(c) and 179(a)-(b) of the CAA, a disapproval in whole or in part of a state submittal initiates a Federal Implementation Plan (FIP) clock and sanctions clocks, respectively, which are terminated by an EPA rulemaking approving a revised plan. On March 29, 2021, Wisconsin submitted a permit containing a revised emission limit and supplemental information in order to remedy the plan's deficiencies specified in EPA's March 23, 2021 rulemaking, along with a request that EPA approve its revised plan for the Rhineland area.

The remainder of this action describes the requirements that SO₂ nonattainment plans must meet in order to obtain EPA approval, provides a review of Wisconsin's revised plan with

² 79 FR 60064 (October 6, 2014).

respect to these requirements, and describes EPA's proposed action on the plan.

II. Requirements for SO₂ Nonattainment Area Plans

Nonattainment SIPs must meet the applicable requirements of the CAA, and specifically CAA sections 172, 191 and 192. EPA's regulations governing nonattainment SIPs are set forth at 40 CFR part 51, with specific procedural requirements and control strategy requirements residing at subparts F and G, respectively. Soon after Congress enacted the 1990 Amendments to the CAA, EPA issued comprehensive guidance on SIPs, in a document entitled the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," published at 57 FR 13498 (April 16, 1992) (General Preamble). Among other things, the General Preamble addressed SO₂ SIPs and fundamental principles for SIP control strategies. *Id.*, at 13545-49, 13567-68. On April 23, 2014, EPA issued recommended guidance for meeting the statutory requirements in SO₂ SIPs, in a document entitled, "Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions," available at https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf. In this guidance EPA described the statutory requirements for a complete nonattainment area SIP, which includes: an accurate emissions inventory of current emissions for all sources of SO₂ within the nonattainment area; an attainment demonstration; demonstration of RFP; implementation of RACM (including RACT); NSR; emissions

limitations and control measures as necessary to attain the NAAQS; and adequate contingency measures for the affected area. EPA already concluded in its March 23, 2021 rulemaking that Wisconsin has met the emissions inventory and NSR requirements.

In order for EPA to fully approve a SIP as meeting the requirements of CAA sections 110, 172 and 191-192 and EPA's regulations at 40 CFR part 51, the SIP for the affected area needs to demonstrate to EPA's satisfaction that each of the aforementioned requirements have been met. Under CAA sections 110(1) and 193, EPA may not approve a SIP that would interfere with any applicable requirement concerning NAAQS attainment and RFP, or any other applicable requirement, and no requirement in effect (or required to be adopted by an order, settlement, agreement, or plan in effect before November 15, 1990) in any area which is a nonattainment area for any air pollutant, may be modified in any manner unless it ensures equivalent or greater emission reductions of such air pollutant.

III. Attainment Demonstration and Longer Term Averaging

CAA section 172(c)(1) directs states with areas designated as nonattainment to demonstrate that the submitted plan provides for attainment of the NAAQS. 40 CFR part 51, subpart G, further delineates the control strategy requirements that SIPs must meet, and EPA has long required that all SIPs and control strategies reflect four fundamental principles of quantification, enforceability, replicability, and accountability. General Preamble at 13567-68. SO₂ attainment

plans must consist of two components: (1) emission limits and other control measures that ensure implementation of permanent, enforceable and necessary emission controls, and (2) a modeling analysis which meets the requirements of 40 CFR part 51, appendix W, which demonstrates that these emission limits and control measures provide for timely attainment of the primary SO₂ NAAQS as expeditiously as practicable, but by no later than the attainment date for the affected area. In all cases, the emission limits and control measures must be accompanied by appropriate methods and conditions to determine compliance with the respective emission limits and control measures and must be quantifiable (*i.e.*, a specific amount of emission reduction can be ascribed to the measures), fully enforceable (specifying clear, unambiguous and measurable requirements for which compliance can be practicably determined), replicable (the procedures for determining compliance are sufficiently specific and non-subjective so that two independent entities applying the procedures would obtain the same result), and accountable (source specific limits must be permanent and must reflect the assumptions used in the SIP demonstrations).

EPA's April 2014 guidance recommends that the emission limits be expressed as short-term average limits (*e.g.*, addressing emissions averaged over one or three hours), but also describes the option to utilize emission limits with longer averaging times of up to 30 days so long as the state meets various suggested criteria. See 2014 guidance, pp. 22 to 39.

The guidance recommends that, should states and sources utilize longer averaging times, the longer term average limit should be set at an adjusted level that reflects a stringency comparable to the 1-hour average limit at the critical emission value shown to provide for attainment that the plan otherwise would have set.

The April 2014 guidance provides an extensive discussion of EPA's rationale for concluding that appropriately set comparably stringent limitations based on averaging times as long as 30 days can be found to provide for attainment of the 2010 SO₂ NAAQS. In evaluating this option, EPA considered the nature of the standard, conducted detailed analyses of the impact of use of 30-day average limits on the prospects for attaining the standard, and carefully reviewed how best to achieve an appropriate balance among the various factors that warrant consideration in judging whether a state's plan provides for attainment. *Id.* at pp. 22 to 39. *See also id.* at appendices B, C, and D.

As specified in 40 CFR 50.17(b), the 1-hour primary SO₂ NAAQS is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour concentrations is less than or equal to 75 ppb. In a year with 365 days of valid monitoring data, the 99th percentile would be the fourth highest daily maximum 1-hour value. The 2010 SO₂ NAAQS, including this form of determining compliance with the standard, was upheld by the U.S. Court of Appeals for the

District of Columbia Circuit in Nat'l Env't'l Dev. Ass'n's Clean Air Project v. EPA, 686 F.3d 803 (D.C. Cir. 2012). Because the standard has this form, a single exceedance does not create a violation of the standard. Instead, at issue is whether a source operating in compliance with a properly set longer term average could cause exceedances, and if so the resulting frequency and magnitude of such exceedances, and in particular whether EPA can have reasonable confidence that a properly set longer term average limit will provide that the average fourth highest daily maximum value will be at or below 75 ppb. A synopsis of how EPA judges whether such plans "provide for attainment," based on modeling of projected allowable emissions and in light of the NAAQS' form for determining attainment at monitoring sites follows.

For SO₂ plans based on 1-hour emission limits, the standard approach is to conduct modeling using fixed emission rates. The maximum emission rate that would be modeled to result in attainment (*i.e.*, in an "average year"³ which shows three days with maximum hourly levels exceeding 75 ppb) is labeled the "critical emission value." The modeling process for identifying this critical emissions value inherently considers the numerous variables that affect ambient concentrations of SO₂, such as meteorological data, background concentrations, and topography.

³ An "average year" is used to mean a year with average air quality. While 40 CFR 50 appendix T provides for averaging three years of 99th percentile daily maximum values (*e.g.*, the fourth highest maximum daily concentration in a year with 365 days with valid data), this discussion and an example below uses a single "average year" in order to simplify the illustration of relevant principles.

In the standard approach, the state would then provide for attainment by setting a continuously applicable 1-hour emission limit at this critical emission value.

EPA recognizes that some sources have highly variable emissions, for example due to variations in fuel sulfur content and operating rate, that can make it extremely difficult, even with a well-designed control strategy, to ensure in practice that emissions for any given hour do not exceed the critical emission value. EPA also acknowledges the concern that longer term emission limits can allow short periods with emissions above the "critical emissions value," which, if coincident with meteorological conditions conducive to high SO₂ concentrations, could in turn create the possibility of a NAAQS exceedance occurring on a day when an exceedance would not have occurred if emissions were continuously controlled at the level corresponding to the critical emission value. However, for several reasons, EPA believes that the approach recommended in its guidance document suitably addresses this concern. First, from a practical perspective, EPA expects the actual emission profile of a source subject to an appropriately set longer term average limit to be similar to the emission profile of a source subject to an analogous 1-hour average limit. EPA expects this similarity because it has recommended that the longer term average limit be set at a level that is comparably stringent to the otherwise applicable 1-hour limit (reflecting a downward adjustment from the critical emissions value) and that takes the

source's emissions profile into account. As a result, EPA expects either form of emission limit to yield comparable air quality.

Second, from a more theoretical perspective, EPA has compared the likely air quality with a source having maximum allowable emissions under an appropriately set longer term limit, as compared to the likely air quality with the source having maximum allowable emissions under the comparable 1-hour limit. In this comparison, in the 1-hour average limit scenario, the source is presumed at all times to emit at the critical emission level, and in the longer term average limit scenario, the source is presumed occasionally to emit more than the critical emission value but on average, and presumably at most times, to emit well below the critical emission value. In an "average year," compliance with the 1-hour limit is expected to result in three exceedance days (*i.e.*, three days with hourly values above 75 ppb) and a fourth day with a maximum hourly value at 75 ppb. By comparison, with the source complying with a longer term limit, it is possible that additional exceedances would occur that would not occur in the 1-hour limit scenario (if emissions exceed the critical emission value at times when meteorology is conducive to poor air quality). However, this comparison must also factor in the likelihood that exceedances that would be expected in the 1-hour limit scenario would not occur in the longer term limit scenario. This result arises because the longer term limit requires lower emissions most of

the time (because the limit is set well below the critical emission value), so a source complying with an appropriately set longer term limit is likely to have lower emissions at critical times than would be the case if the source were emitting as allowed with a 1-hour limit.

As a hypothetical example to illustrate these points, suppose a source always emits 1000 pounds of SO₂ per hour (lbs/hr), which results in air quality at the level of the NAAQS (*i.e.*, results in a design value of 75 ppb). Suppose further that in an "average year," these emissions cause the 5 highest maximum daily average 1-hour concentrations to be 100 ppb, 90 ppb, 80 ppb, 75 ppb, and 70 ppb. Then suppose that the source becomes subject to a 30-day average emission limit of 700 lbs/hr. It is theoretically possible for a source meeting this limit to have emissions that occasionally exceed 1000 lbs/hr, but with a typical emissions profile emissions would much more commonly be between 600 and 800 lbs/hr. In this simplified example, assume a zero background concentration, which allows one to assume a linear relationship between emissions and air quality. (A nonzero background concentration would make the mathematics more difficult but would give similar results.) Air quality will depend on what emissions happen on what critical hours, but suppose that emissions at the relevant times on these 5 days are 800 lbs/hr, 1100 lbs/hr, 500 lbs/hr, 900 lbs/hr, and 1200 lbs/hr, respectively. (This is a conservative example because the average of these emissions, 900 lbs/hr, is well over

the 30-day average emission limit.) These emissions would result in daily maximum 1-hour concentrations of 80 ppb, 99 ppb, 40 ppb, 67.5 ppb, and 84 ppb. In this example, the fifth day would have an exceedance that would not otherwise have occurred (84 ppb under the 30-day average limit compared to 70 ppb under the 1-hour limit). However, the third day would not have an exceedance that otherwise would have occurred (40 ppb under the 30-day average limit compared to 80 ppb under the 1-hour limit). The fourth day would have been below, rather than at, 75 ppb (67.5 ppb under the 30-day average limit compared to 75 ppb under the 1-hour limit). In this example, the fourth highest maximum daily concentration under the 30-day average would be 67.5 ppb.

This simplified example illustrates the findings of a more complicated statistical analysis that EPA conducted using a range of scenarios using actual plant data. As described in appendix B of EPA's April 2014 SO₂ nonattainment planning guidance, EPA found that the requirement for lower average emissions is likely to yield as good air quality as is required with a comparably stringent 1-hour limit. Based on analyses described in appendix B of its 2014 guidance and similar subsequent work, EPA expects that emission profiles with maximum allowable emissions under an appropriately set comparably stringent 30-day average limit are likely to have the net effect of no more exceedances and as good air quality of an emission profile with maximum allowable emissions under a 1-hour emission

limit at the critical emission value.⁴ This result provides a compelling policy rationale for allowing the use of a longer averaging period, in appropriate circumstances where the facts indicate this result can be expected to occur.

The question then becomes whether this approach, which is likely to produce a lower number of overall exceedances even though it may produce some unexpected exceedances above the critical emission value, meets the requirement in section 110(a)(1) and 172(c)(1) for state implementation plans to "provide for attainment" of the NAAQS. For SO₂, as for other pollutants, it is generally impossible to design a nonattainment plan in the present that will guarantee that attainment will occur in the future. A variety of factors can cause a well-designed attainment plan to fail and unexpectedly not result in attainment, for example if meteorology occurs that is more conducive to poor air quality than was anticipated in the plan. Therefore, in determining whether a plan meets the requirement to provide for attainment, EPA's task is commonly to judge not whether the plan provides absolute certainty that attainment will in fact occur, but rather whether the plan provides an

⁴ See also further analyses described in rulemaking on the SO₂ nonattainment plan for Southwest Indiana. In response to comments expressing concern that the emission profiles analyzed for appendix B represented actual rather than allowable emissions, EPA conducted additional work formulating sample allowable emission profiles and analyzing the resulting air quality impact. This analysis provided further support for the conclusion that an appropriately set longer term average emission limit in appropriate circumstances can suitably provide for attainment. The rulemaking describing these further analyses was published on August 17, 2020, at 85 FR 49967, available at <https://www.govinfo.gov/content/pkg/FR-2020-08-17/pdf/2020-16044.pdf>. A more detailed description of these analyses is available in the docket for that action, specifically at <https://www.regulations.gov/document?D=EPA-R05-OAR-2015-0700-0023>.

adequate level of confidence of prospective NAAQS attainment. From this perspective, in evaluating use of a 30-day average limit, EPA must weigh the likely net effect on air quality. Such an evaluation must consider the risk that occasions with meteorology conducive to high concentrations will have elevated emissions leading to exceedances that would not otherwise have occurred, and must also weigh the likelihood that the requirement for lower emissions on average will result in days not having exceedances that would have been expected with emissions at the critical emissions value. Additional policy considerations, such as accommodating real world emissions variability without significant risk of violations, are also appropriate factors for EPA to weigh in judging whether a plan provides a reasonable degree of confidence that the plan will lead to attainment. Based on these considerations, EPA believes that a continuously enforceable limit averaged over as long as 30 days, if determined in accordance with EPA's guidance, can reasonably be considered to provide for attainment of the 2010 SO₂ NAAQS.

The April 2014 guidance offers specific recommendations for determining an appropriate longer term average limit. The recommended method starts with determination of the 1-hour emission limit that would provide for attainment (*i.e.*, the critical emission value), then applies an adjustment factor to determine the (lower) level of the longer term average emission limit that would be estimated to have a stringency comparable to

the 1-hour emission limit. This method uses a database of continuous emission data reflecting the type of control that the source will be using to comply with the SIP emission limits, which (if compliance requires new controls) may require use of an emission database from another source. The recommended method involves using these data to compute a complete set of emission averages, computed according to the averaging time and averaging procedures of the prospective emission limitation. In this recommended method, the ratio of the 99th percentile among these long term averages to the 99th percentile of the 1-hour values represents an adjustment factor that may be multiplied by the candidate 1-hour emission limit to determine a longer term average emission limit that may be considered comparably stringent.⁵ The guidance also addresses a variety of related topics, such as the potential utility of setting supplemental emission limits, such as mass-based limits, to reduce the likelihood and/or magnitude of elevated emission levels that might occur under the longer term emission rate limit.

Preferred air quality models for use in regulatory applications are described in appendix A of EPA's *Guideline on Air Quality Models* (40 CFR part 51, appendix W). In 2005, EPA promulgated AERMOD as the Agency's preferred near-field dispersion modeling for a wide range of regulatory applications addressing stationary sources (for example in estimating SO₂

⁵ For example, if the critical emission value is 1000 lbs/hr of SO₂, and a suitable adjustment factor is determined to be 70 percent, the recommended longer term average limit would be 700 lbs/hr.

concentrations) in all types of terrain based on extensive developmental and performance evaluation. Supplemental guidance on modeling for purposes of demonstrating attainment of the SO₂ standard is provided in appendix A to the April 23, 2014 SO₂ nonattainment area SIP guidance document referenced above. Appendix A provides extensive guidance on the modeling domain, the source inputs, assorted types of meteorological data, and background concentrations. Consistency with the recommendations in this guidance is generally necessary for the attainment demonstration to offer adequately reliable assurance that the plan provides for attainment.

As stated previously, attainment demonstrations for the 2010 1-hour primary SO₂ NAAQS must demonstrate future attainment and maintenance of the NAAQS in the entire area designated as nonattainment (*i.e.*, not just at the violating monitor). This is demonstrated by using air quality dispersion modeling (see appendix W to 40 CFR part 51) that shows that the mix of sources, enforceable control measures, and emission rates in an identified area will not lead to a violation of the SO₂ NAAQS. For a short-term (*i.e.*, 1-hour) standard, EPA believes that dispersion modeling, using allowable emissions and addressing stationary sources in the affected area (and in some cases those sources located outside the nonattainment area which may affect attainment in the area) is technically appropriate, efficient and effective in demonstrating attainment in nonattainment areas because it takes into consideration combinations of

meteorological and emission source operating conditions that may contribute to peak ground-level concentrations of SO₂.

The meteorological data used in the analysis should generally be processed with the most recent version of AERMET. Estimated concentrations should include ambient background concentrations, should follow the form of the standard, and should be calculated as described in section 2.6.1.2 of the August 23, 2010 clarification memo on "Applicability of appendix W Modeling Guidance for the 1-hr SO₂ National Ambient Air Quality Standard" (U.S. EPA, 2010a).

IV. Review of Modeled Attainment Plan

The following discussion evaluates various features of the modeling that Wisconsin used in its attainment demonstration.

A. Model Selection

Wisconsin's attainment demonstration used AERMOD, the preferred model for this application. Wisconsin's January 2016 submittal used version 15181 of this model, which was the most recent version at that time. However, the supplemental modeling that Wisconsin submitted in March 2021 used version 19191, which is the current regulatory version of AERMOD. EPA finds this selection appropriate.

Wisconsin's receptor grid and modeling domain for the Rhinelander area followed the recommended approaches from EPA's *Guideline on Air Quality Models (40 CFR part 51, appendix W)*. Receptor spacing for each modeled facility was every 25 meters out to a distance of 500 meters from each source, then every 50

meters to 1000 meters, every 100 meters out to 3 kilometers, every 250 meters out to 6 kilometers, and every 500 meters out to 10 kilometers.

Wisconsin determined that the Rhinelander area should be modeled with rural dispersion coefficients, as Ahlstrom-Munksjö is surrounded by less than 50% of land classified as industrial, commercial, or dense residential within 3 kilometers, as recommended by EPA's *Guideline on Air Quality Models*.

Therefore, EPA concurs with Wisconsin's determination that this area warrants being modeled with rural dispersion coefficients.

B. Simulation of Downwash

Modeling of emissions from Ahlstrom-Munksjö has historically underpredicted concentrations measured at a nearby monitor. When winds blow from this facility toward the monitor, the emissions traverse a corner of the building. Under these circumstances, the building appears to cause enhanced eddies in the air flow, known as corner vortices, which in certain circumstances appear to result in a substantial enhancement of downwash of emissions to ground level and substantially greater concentrations than are modeled using the standard downwash algorithm in AERMOD.

Recognizing these issues, the company contracted for a wind tunnel study, carried out by Cermak Peterka Petersen (CPP), to assess the magnitude of this effect and to support a more accurate assessment of downwash at this facility. This study supported the conclusion that the discrepancy between modeled

and monitored SO₂ concentrations were due to the corner vortex phenomenon, a phenomenon that is described in EPA's "Guideline for Determination of Good Engineering Practice Stack Height (Technical Support Document for the Stack Height Regulations)." ⁶

The wind tunnel study showed that as the wind approaches the corner of the Ahlstrom-Munksjö building, vortices are created that act to increase the SO₂ concentrations downwind of the building. Analysis of these results suggested that the influence of these corner vortices vary by wind speed.

Ahlstrom-Munksjö's consultants, AECOM and CPP, developed an equation estimating a multiplier, varying by wind speed, by which to estimate the impact of downwash in this case, *i.e.* a multiplier by which to multiply concentrations estimated in absence of downwash to estimate concentrations reflecting the downwash induced by this facility. The wind tunnel study focused on concentrations in the direction with the most enhanced downwash but applied the same adjustment in all directions. Since there is less downwash in directions less influenced by corner vortices, EPA considers this approach conservative in maximizing estimated downwash effects on concentrations.

Wisconsin's 2016 SIP submittal relied on modeling Ahlstrom-Munksjö using a stack height of 90 meters. For this facility, the "formula good engineering practice (GEP) stack height" computed according to the formula in EPA's stack height

⁶ EPA-450/4-80-023R, June 1985

regulations (defined at 40 CFR 51.100(ii)(2)(ii)) is 75 meters. EPA disapproved the 2016 submittal because EPA's stack height regulations prohibit credit for a stack above formula GEP stack height unless the state meets requirements specified in those regulations for the level of control at the facility. Wisconsin's 2021 submittal meets EPA's stack height regulations by applying a limit demonstrated to provide attainment with a stack at the creditable height of 75 meters.

The wind tunnel studies primarily simulated a stack with a height of 85 meters, with another run simulating a stack with a height of 90 meters. These runs indicated the following equation to estimate the ratio of concentrations expected with the building as compared concentrations without the building:

Equation 1:
$$R = A \exp\left(-\frac{\left(\frac{1}{U_{airport}} - \frac{1}{U_{max}}\right)^2}{B^2}\right) + 1$$

The variable R is the ratio multiplier that is applied to the hourly emission rate file used in AERMOD. The $U_{airport}$ and U_{max} values represent the actual hourly wind speed measured at the Rhineland airport and the maximum wind speed, *i.e.*, wind speed exceeded less than 1% of the time, of 10.8 meters per second. The A and B parameters are best-fit coefficients. The A parameter, plus 1, represents the maximum multiplier that can be applied to the hourly emissions.

While this equation was originally derived to assess the wind-speed-dependent influence of downwash with a 90-meter stack, the influence of downwash for a 75-meter stack may be derived based on these same 85-meter and 90-meter results by

using a best-fit coefficient (A) that is specific to a 75-meter stack. The best-fit coefficient was originally developed using wind tunnel data at an 85-meter stack height. This coefficient was then adjusted using observed and predicted concentration ratios, from the wind tunnel information, to determine the appropriate coefficient for a 75-meter stack height. For a 75-meter stack, Wisconsin applied the above equation with a value of A of 0.826 and B of 0.174.

Wisconsin did not modify any algorithms or computer code in AERMOD to reflect this enhancement of the influence of downwash. Instead, Wisconsin implemented this enhancement by using modified model inputs. Wisconsin first examined hourly wind speeds. Wisconsin computed hourly downwash multipliers based on the above equation. Ordinarily, Wisconsin would run AERMOD using a fixed emission rate reflecting the allowable emission rate, but in this case Wisconsin input an hourly varying emission rate in which each hour's input value equaled the fixed emission rate (reflecting the allowable emission rate) times that hour's downwash multiplier. For example, for an hour with a wind speed of 5 meters per second, for which the above equation gives a downwash multiplier of 1.564, the modeled emission rate for that hour reflected multiplication times 1.564. This multiplier gives the expected ratio of concentrations with the magnitude of downwash at this facility as compared to the concentrations expected if no downwash were occurring. Therefore, Wisconsin estimated hourly concentrations

with Ahlstrom-Munksjö-specific downwash by modeling the facility without downwash but incorporating the expected impact of downwash at this facility by increasing the emission rate modeled for each hour accordingly.

EPA views Wisconsin's modeling as applying an alternate model under the terms of 40 CFR 51 appendix W section 3.2.2.b.2. Under the alternative model criteria discussed in section 3.2.2.b.2, it must be shown that the alternative model performs better for a given application than the recommended model, using a statistical analysis. The State of Wisconsin evaluated the performance of the alternative model from both a theoretical and a performance perspective. This information was included in the public notice which preceded Wisconsin finalizing its submittal. The Wisconsin analysis showed that the alternative model predicted a design value slightly above the monitored design value using the recent three years of monitoring data, 2017-2019. The most recent three years reflect the impact of emissions exiting the 90-meter stack. Recent meteorological data, processed for modeling purposes, was not available. Consequently, the comparison was conducted using the full five years of meteorology applied for the attainment demonstration.

Additional comparisons were conducted that examined, on a year-to-year basis, how well the alternative model was performing compared to the regulatory version of the model and compared to monitoring data. That analysis only used emissions from boiler B26, which vents through Stack S09, when the boiler

was actually operating, essentially non-summer months for the years 2017-2019. This supplemental modeling was conducted using a grid focused on a 400-meter by 400-meter area around the monitor to the north of Ahlstrom-Munskjö. Again, 5 years of meteorological data (2011-2015) was used in the modeling.

The model to monitor comparison used High 1st High concentrations, the average of the top 26 values, fractional bias, and 99th percentile values. The results of the comparison showed that the alternative model performed consistently better than the regulatory version, that is it predicted higher concentrations than the standard version of AERMOD. Additionally, the year-by-year comparisons to the monitored data showed that the alternative model produced underestimates for one year, overestimates for one year, and very similar estimates for the third year. There was considerable year-to-year variability, as one would expect. Consequently, the alternative model was viewed to be acceptable based on the theoretical aspects of its development, the superior performance compared to the recommended model, and the overall unbiased nature of the alternative model's predictions.

Wisconsin's alternate model characterization was reviewed and concurred with on May 28, 2021 by EPA's Model Clearinghouse under EPA's *Guideline on Air Quality Models* criteria for alternate models. EPA Region 5's request for concurrence and EPA's Model Clearinghouse concurrence letters are included in the docket for this action.

C. Meteorological Data

Wisconsin used Rhinelander-Oneida County Airport (KRHI) surface data and Green Bay, Wisconsin upper air data, years 2011-2015, for modeling the Rhinelander area. The surface station is located less than 5 kilometers from Ahlstrom-Munksjö and is located in similar rolling terrain. Given the close proximity of the surface station and the similarity in surrounding terrain, EPA finds the use of the KRHI airport data, combined with the Green Bay upper air data to be appropriate, representative meteorological data sets for assessing dispersion at the facility.

D. Emissions Data

Wisconsin included all point sources within 50 kilometers of Rhinelander in its modeling analysis. These sources included boilers B26 (sometimes coal fired) and B28 (natural gas and oil fired) at Ahlstrom-Munksjö, the Kerry Inc. facility (formerly Red Arrow Foods), and the PCA facility. Wisconsin found that no other sources were close enough to cause significant concentration gradients. Boilers B20, B21, B22, and B23 at Ahlstrom-Munksjö were shut down in 2014, and their decommissioning is included in a federally enforceable permit, so they were not included in the modeling analysis. Wisconsin determined that boiler B26, which vents through stack S09, was primarily responsible for the Rhinelander area nonattainment designation, as the modeling results show that boiler B26 accounts for 94-95 percent of the total SO₂ concentration in the

area depending on the boiler load. Therefore, boiler B26 was modeled at both minimum and maximum loads. The Kerry Inc. and PCA sources, as well as Ahlstrom-Munksjö boiler B28, were modeled at their current permitted maximum allowable SO₂ emissions, as contained in federally enforceable permits.

E. Emission Limits

An important prerequisite for approval of an attainment plan is that the emission limits that provide for attainment be quantifiable, fully enforceable, replicable, and accountable. See General Preamble at 13567-68. The limit for Ahlstrom-Munksjö is expressed as a 24-hour average limit. Therefore, part of the review of Wisconsin's attainment plan must address the use of this limit, both with respect to the general suitability of using such limits for this purpose and with respect to whether the particular limits included in the plan have been suitably demonstrated to provide for attainment. The first subsection that follows addresses the enforceability of the limits in the plan, and the second subsection that follows addresses in particular the 24-hour average limit.

1. Enforceability

In preparing its plan, Wisconsin adopted a revision to a previously approved construction permit, Air Pollution Control Construction Permit Revision 15-DMM-128-R1, governing the Ahlstrom-Munksjö SO₂ emissions. These permit revisions were adopted by Wisconsin following established, appropriate public review procedures. The revised permit limits boiler B26

emission rates to 2.38 pounds per million British Thermal Unit (lbs/MMBTU) on a 24-hour average basis. This limit is more stringent than the previously approved limit of 3.0 lbs/MMBTU on a 24-hour average basis. The 3.0 lbs/MMBTU limit was included as part of Wisconsin's 2016 attainment demonstration that EPA disapproved in its March 23, 2021 rulemaking. In accordance with EPA policy, the 24-hour average limit is set at a lower level than the emission rate used in the attainment demonstration; the relationship between these two values is discussed in more detail in the following section.

Additionally, the revised permit limits the maximum heat input to boiler B26 to 260 MMBTU/hour and requires that stack S09 be a minimum of 75 meters (246 feet) above ground, as opposed to the previous boiler B26 limit of 300 MMBTU/hour and requirement that stack S09 be a minimum of 90 meters (296 feet) off the ground.⁷ The permit compliance date for Ahlstrom-Munksjö is December 31, 2021. EPA finds that this construction permit revision provides for permanent enforceability.

2. Longer Term Average Limits

Ahlstrom-Munksjö requested a limit expressed as a 24-hour average limit in order to have a more robust limit, *i.e.* a limit based on more values that would be less prone to indicate noncompliance based on ordinary fluctuations in emissions. In accordance with EPA's April 2014 guidance for SO₂ nonattainment plans, Wisconsin therefore adjusted its limit, reducing the

⁷ For more discussion on stack height, see EPA's November 25, 2020 proposed partial approval and partial disapproval (85 FR 75273).

limit for purposes of assuring comparable stringency to the 1-hour limit that it otherwise would have adopted.

Although compliance with this limit will be determined on the basis of continuous emissions monitoring system (CEMS) data, the facility does not have a sufficient historical record of CEMS data to be able to evaluate source-specific emissions variability for purposes of determining a source-specific factor by which to adjust the 1-hour limit for this source. Instead, Wisconsin determined its 24-hour average limit by applying one of the national average adjustment factors listed in appendix D of EPA's guidance. In particular, Wisconsin set its 24-hour average limit at 93 percent of the modeled emission rate, reflecting the national average adjustment factor that EPA found among facilities without emission control equipment. While the facility operates dry sorbent injection equipment to control hydrogen chloride (HCl) emissions so as to meet the maximum available control technology requirements for industrial boilers, HCl is generally much easier to control than SO₂, and the information about the facility's sorbent usage provided in Wisconsin's submittal supports a conclusion that sorbent injection likely reduces SO₂ emissions by less than one percent. Therefore, sorbent usage may be presumed to have very little impact on the variability of SO₂ emissions at this facility, and the national average adjustment factor for facilities without control equipment is likely to provide the best estimate of the appropriate degree of adjustment to determine a 24-hour limit

that is comparably stringent to the 1-hour limit that otherwise would have been established.

Wisconsin set its limit at 2.38 lbs/MMBTU, corresponding to 93 percent of the 2.56 lbs/MMBTU emission rate that Wisconsin modeled.⁸ Although appendix D of EPA's guidance reports average adjustment factors based on 99th percentile values among lbs/hr data rather than among lbs/MMBTU data, EPA generally finds that lbs/hr data show greater variability than lbs/MMBTU data, and so use of an adjustment factor determined from analysis of lbs/hr data is likely to yield a conservative (more stringent) result.

The Ahlstrom-Munksjö 24-hour average SO₂ emissions will be calculated by summing the emissions rates of each 1-hour operating period and dividing by the number of operating hours for that calendar day. Although EPA recommends that the average values be calculated by summing the total emissions and dividing by the total heat input for each day, this approach is infeasible for Ahlstrom-Munksjö. Because Ahlstrom-Munksjö is using Method 19, calculating lbs/MMBTU SO₂ concentration without evaluating either the mass or the heat input,⁹ the facility does not obtain the hourly mass or heat input values to support a calculation of daily total mass or daily total heat input. As the differences in results of the two approaches are expected to be minimal, EPA concurs with Wisconsin's approach.

⁸ To be precise, the emission rates that Wisconsin modeled reflected 2.56 lbs/MMBTU times the allowable operating rate of 260 MMBTU/hour times the hour-specific downwash multiplier discussed above.

⁹ "Method 19 - Determination of Sulfur Dioxide Removal Efficiency and Particulate Matter, Sulfur Dioxide, and Nitrogen Oxide Emission Rates" (40 CFR part 60, appendix A)

Ahlstrom-Munksjö requested that Wisconsin specify compliance determination procedures for days with fewer hours of data (generally, days with fewer hours of operation) in order to ensure robust compliance determinations, specifically to ensure that compliance is determined on the basis of a minimum of 18 hours of data. For days with fewer than 24 but at least 18 hours of data, compliance will be determined by averaging the emissions rates from the hours of operation. For operating days with fewer than 18 hours of data, compliance will be determined by averaging all the values from that day along with all the values from the most recent day with at least 18 hours of valid data. EPA supports the principle of ensuring that compliance with a long-term average limit should be based on a robust data set. Wisconsin's approach also is consistent with the principle that the facility shall be accountable for emissions at all times, *i.e.* that days with fewer hours of data shall not be disregarded but rather shall be included in a suitably constructed compliance determination. Therefore, EPA concludes that Wisconsin is using an appropriate approach for addressing days with fewer hours of data.

Based on a review of the State's submittal, EPA believes that the 24-hour-average limit for Boiler B26 at Ahlstrom-Munksjö provides a suitable alternative to establishing a 1-hour average emission limit for this source. EPA finds that Wisconsin used an appropriate adjustment factor, yielding an emission limit that has comparable stringency to the 1-hour

average limit that the State determined would otherwise have been necessary to provide for attainment. While the 24-average limit allows occasions in which emissions may be higher than the level that would be allowed with the 1-hour limit, the State's limit compensates by requiring average emissions to be lower than the level that would otherwise have been required by a 1-hour average limit. For the reasons described above and explained in more detail in EPA's April 2014 guidance for SO₂ nonattainment plans, EPA finds that appropriately set longer term average limits provide a reasonable basis by which nonattainment plans may provide for attainment. Based on its review of this general information as well as the particular information in Wisconsin's plan, EPA finds that the 24-hour-average limit for boiler B26 at Ahlstrom-Munksjö is a suitable alternative to establishing a 1-hour limit on emissions from this boiler.

F. Background Concentrations

Wisconsin determined background concentrations for the Rhinelander area using 2013-2015 data from the Horicon (Dodge County) monitor, which is approximately 250 kilometers south of Rhinelander. The background concentration values that Wisconsin used varied by month and hour of the day and ranged from 1.40 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to 14.1 $\mu\text{g}/\text{m}^3$ with an average value of 4.87 $\mu\text{g}/\text{m}^3$. EPA agrees that the values from the Horicon monitor are representative for background concentration estimates.

G. Summary of Results

Modeling for the Rhinelander Area in Wisconsin's March 2021 submittal showed a design value of 74.8 ppb (195.8 $\mu\text{g}/\text{m}^3$). This resulted from modeling the Ahlstrom-Munksjö boiler B26 at maximum load, combined with all other area sources and including a background concentration. The run was conducted with emissions at 2.56 lbs/MMBTU, a level that corresponds in stringency to the 2.38 lbs/MMBTU 24-hour average emission limit that Wisconsin adopted and submitted and is more stringent than the previous 24-hour emission limit of 3.0 lbs/MMBTU. Therefore, EPA concludes that Wisconsin's plan provides for attainment in this area.

V. Review of Other Plan Requirements

A. RACM/RACT

CAA section 172(c)(1) states that nonattainment plans shall provide for the implementation of all RACM as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of RACT) and shall provide for attainment of the national primary ambient air quality standards. CAA section 172(c)(6) requires plans to include enforceable emissions limitations, and such other control measures as may be necessary or appropriate to provide for attainment of the NAAQS. In its March 23, 2021 rulemaking, EPA disapproved Wisconsin's 2016 attainment plan because the Ahlstrom-Munksjö emissions limits (3.0 lbs/MMBTU 24-hour average

SO₂ limit and 300 MMBTU/hr operating limit) provided in the plan were not calculated in compliance with the stack height regulations. Therefore, the plan could not be considered to provide an appropriate attainment demonstration, and it did not demonstrate RACM/RACT or meet the requirement for necessary emissions limitations or control measures. Wisconsin's revised plan for attaining the 1-hour SO₂ NAAQS in the Rhinelander area is based on a variety of measures, including more stringent SO₂ emissions and operating limits (2.38 lbs/MMBTU 24-hour average SO₂ limit and 260 MMBTU/hr operating limit) for Ahlstrom-Munksjö, which were calculated in compliance with the stack height regulations. Wisconsin's plan requires compliance with these measures by December 31, 2021. Wisconsin has determined that these measures suffice to provide for attainment. EPA concurs and proposes to conclude that the State has satisfied the requirement in section 172(c)(1) and (6) to adopt and submit all RACM/RACT and emissions limitations or control measures as needed to attain the standards as expeditiously as practicable.

B. Reasonable Further Progress (RFP)

In its March 23, 2021 rulemaking, EPA concluded that Wisconsin had not satisfied the requirement in section 172(c)(2) to provide for RFP toward attainment. Wisconsin's 2016 attainment plan did not demonstrate that the implementation of the control measures required under the plan were sufficient to provide for attainment of the NAAQS in the Rhinelander SO₂ nonattainment area consistent with EPA requirements (in

particular consistent with EPA stack height regulations).

Therefore, a compliance schedule to implement those controls was not sufficient to provide for RFP. Wisconsin's revised plan requires compliance by December 31, 2021. Wisconsin concludes that this is an ambitious compliance schedule, as described in April 2014 guidance for SO₂ nonattainment plans, and concludes that this plan therefore provides for RFP in accordance with the approach to RFP described in EPA's 2014 guidance. EPA concurs and proposes to conclude that the plan provides for RFP.

C. Contingency Measures

As noted above, EPA guidance describes special features of SO₂ planning that influence the suitability of alternative means of addressing the requirement in section 172(c)(9) for contingency measures for SO₂, such that in particular an appropriate means of satisfying this requirement is for the State to have a comprehensive enforcement program that identifies sources of violations of the SO₂ NAAQS and to undertake an aggressive follow-up for compliance and enforcement. Wisconsin's plan provides for satisfying the contingency measure requirement in this manner.¹⁰ EPA concurs and proposes to approve Wisconsin's plan for meeting the contingency measure requirement in this manner.

¹⁰ Wisconsin Department of Natural Resources (WDNR) maintains an enforcement program to ensure compliance with SIP requirements. The Bureau of Air Management houses an active statewide compliance and enforcement team that works in all geographic regions of the State. WDNR refers actions as necessary to the Wisconsin Department of Justice with the involvement of WDNR. *Wis. Stats.* 285.83 and *Wis. Stats.* 285.87 provide WDNR with the authority to enforce violations and assess penalties, to ensure that required measures are ultimately implemented.

VI. What Action is EPA Taking?

EPA is proposing to approve Wisconsin's SIP submission, which the State submitted to EPA on March 29, 2021 to supplement the prior SIP it had submitted on January 22, 2016 and supplemented on July 18, 2016, and November 29, 2016, for attaining the 2010 1-hour SO₂ NAAQS for the Rhinelander area and for meeting other nonattainment area planning requirements. This SO₂ attainment plan includes Wisconsin's attainment demonstration for the Rhinelander area. The plan also addresses requirements for RFP, RACT/RACM, and contingency measures. EPA has previously concluded that Wisconsin has addressed the requirements for emissions inventories for the Rhinelander area and nonattainment area NSR. EPA has determined that Wisconsin's Rhinelander SO₂ plan meets applicable requirements of section 172 of the CAA.

Wisconsin's Rhinelander SO₂ plan is based on the emissions limits specified in Air Pollution Control Construction Permit Revision 15-DMM-128-R1. Wisconsin seeks EPA to approve several elements of the permit, including the permit cover sheet, emissions limitations for Ahlstrom-Munksjö (Conditions A.3.a.(1)-(3)), compliance demonstration (Conditions A.3.b.(1)-(3)), reference test methods, recordkeeping and monitoring requirements (Conditions A.3.c.(1)-(5) and A.3.c.(7)-(9)), and the effective date (Condition YY.1.a.(1)). Wisconsin did not seek approval of limits and test methods associated with oil sulfur content. Wisconsin stated that limits on the portion of

emissions from oil are unnecessary to comply with the 24-hour SO₂ emission limit and the boiler heat input limit, and attainment is ensured by limits on total emissions from boiler B26. EPA concurs with Wisconsin's rationale, and therefore EPA is proposing to approve these elements of the permit.

Additionally, EPA is proposing to replace the previously approved consent and administrative orders (AM-94-38 and AM-15-01) governing the Ahlstrom-Munksjö emission limits¹¹ with the elements of Wisconsin's Air Pollution Control Construction Permit Revision 15-DMM-128-R1 specified above. This replacement would not be effective until December 31, 2021, which is the revised permit compliance date for Ahlstrom-Munksjö. Section 110(1) of the CAA states that EPA "shall not approve a revision of a plan if the revision would interfere with any applicable requirement" Since Permit 15-DMM-128-R1 contains a more stringent SO₂ limit for Ahlstrom-Munksjö (2.38 lbs/MMBTU on a 24-hour average basis) than the previous orders (3.0 lbs/MMBTU on a 24-hour average basis), and since Wisconsin has demonstrated that the limit in Permit 15-DMM-128-R1 provides for attainment without need for the limits in the prior orders, EPA concludes that Section 110(1) does not prohibit EPA from replacing the prior orders with the newer permit, and EPA is proposing to act in accordance with this Wisconsin request.

EPA is taking public comments for thirty days following the

¹¹ Orders AM-94-38 and AM-15-01 were issued to the facility's prior owner, Expera, but the orders continued to limit the facility's emissions after it was acquired by Ahlstrom-Munksjö.

publication of this proposed action in the *Federal Register*. EPA will take all comments into consideration in the final action. If this approval is finalized, it would terminate the sanctions clock started under CAA section 179 resulting from EPA's partial disapproval of the prior SIP, as well as EPA's duty to promulgate a FIP for the area under CAA section 110(c) that resulted from the previous partial disapproval.

VII. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the specific portions of Wisconsin Air Pollution Control Construction Permit Revision 15-DMM-128-R1, effective December 31, 2021, as described in section VI. above. EPA has made, and will continue to make, these documents generally available through www.regulations.gov and at the EPA Region 5 Office (please contact the person identified in the **"FOR FURTHER INFORMATION CONTACT"** section of this preamble for more information).

Also in this document, as described in section VI, EPA is proposing to remove provisions of the EPA-Approved Wisconsin Source Specific Requirements from the Wisconsin State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

VIII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA ; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: July 13, 2021.

Cheryl Newton,
Acting Regional Administrator, Region 5.

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